

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRIAN TOOTLE,)	
Plaintiff,)	
)	C.A. No. 20-235 Erie
v.)	
)	District Judge Susan Paradise Baxter
CORRECTIONAL OFFICER LONG,)	Magistrate Judge Richard A. Lanzillo
Defendant.)	

MEMORANDUM ORDER

Plaintiff Brian Tootle, an inmate incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania (“SCI-Forest”), initiated this *pro se* civil rights action on August 13, 2020, against Defendant Correctional Officer Long. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The case was subsequently reassigned to the undersigned, as presiding judge, on December 28, 2020, with Judge Lanzillo remaining as the referred Magistrate Judge for all pretrial proceedings.

In his *pro se* complaint, Plaintiff alleges that Defendant confiscated his religious materials and denied him access to those materials while he was in the Restricted Housing Unit (“RHU”) in violation of his rights under the Free Exercise Clause of the first amendment to the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). On December 28, 2020, Defendant filed a motion to dismiss [ECF No. 21], arguing that Plaintiff’s complaint fails to state a claim upon which relief can be granted.

On July 19, 2021, Magistrate Judge Lanzillo issued a report and recommendation

(“R&R”) recommending that Defendant’s motion to dismiss be granted as to Plaintiff’s RLUIPA claim to the extent such claim is brought against Defendant in his individual capacity and for monetary damages; however, it is recommended that Plaintiff be allowed to amend his complaint to assert his RLUIPA claim against Defendant in his official capacity and for injunctive and/or declaratory relief only. The R&R recommends further that Defendant’s motion to dismiss be denied in all other respects [ECF No. 26]. The time for filing objections to the R&R expired on August 5, 2021, and no objections have been received from either party.

Thus, after de novo review of the complaint, Defendants’ motion to dismiss, and Plaintiff’s opposition thereto, together with the report and recommendation filed in this case, the following order is entered:

AND NOW, this 13th day of August, 2021;

IT IS HEREBY ORDERED that Defendant’s motion to dismiss [ECF No. 21] is granted in part and denied in part, as follows: Defendant’s motion is GRANTED as to Plaintiff’s RLUIPA claim against Defendant in his individual capacity and to the extent it seeks monetary damages, but the motion is DENIED in all other respects.

IT IS FURTHER ORDERED that Plaintiff is granted the right to amend his complaint to reassert his RLUIPA claim against Defendant in his official capacity and for injunctive and/or declaratory relief only. Plaintiff shall file such amendment, if he so desires, within thirty (30) days of the date of this Order. If Plaintiff fails to file an amended complaint within such time, Plaintiff’s RLUIPA claim will be considered dismissed in its entirety, with prejudice. The report and recommendation of Magistrate Judge Lanzillo, issued July 19, 2021 [ECF No. 26], is

adopted as the opinion of the Court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge